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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MASSACHUSETTS

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5 IN RE: NEW ENGLAND COMPOUNDING) MDL NO. 13-02419-RWZ
6 PHARMACY CASES LITIGATION)
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BEFORE: THE HONORABLE RYA W. ZOBEL and
THE HONORABLE JENNIFER C. BOAL

STATUS CONFERENCE AND
MOTION HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, MA 02210

January 14, 2015
2:00 p.m.

Catherine A. Handel, RPR-CM, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
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(Appearances continued on the next page.)

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FOR PAUL D. MOORE, IN HIS CAPACITY AS CHAPTER 11 TRUSTEE OF NECP, INC.:

Duane Morris LLP by MICHAEL R. GOTTFRIED, ESQ., 100 High Street, Suite 2400, Boston, MA 02110-1724.

P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Rya W. Zobel United States District Court Judge, and the Honorable Jennifer C. Boal, Magistrate Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on January 14, 2015.)

THE COURT: Good afternoon. Please be seated.

COURTROOM DEPUTY CLERK URSO: This is In Re: New England Compounding. It's MD 13-2419.

THE COURT: Okay. So, we have for the plaintiffs, Ms. Johnson.

MS. JOHNSON: Good afternoon, your Honor.

THE COURT: Mr.?

MR. CHALOS: Mark Chalos, your Honor, for the plaintiff.

THE COURT: I'm sorry?

MR. CHALOS: Mark Chalos.

THE COURT: Mr. Chalos?

MR. CHALOS: Yes.

MR. STRANCH: Gerald Stranch.

THE COURT: Mr. Sobol -- No. Mr. Stranch.

MR. STRANCH: Stranch.

THE COURT: Stranch, right.

MR. FENNELL: Patrick Fennell.

1 THE COURT: Mr. Fennell. And?

2 MR. ELLIS: Rick Ellis.

3 MR. GASTEL: Ben Gastel.

4 THE COURT: Van Gastel?

5 MR. GASTEL: Ben Gastel.

6 MS. DOUGHERTY: Good afternoon, your Honor. Kim
7 Dougherty for the Plaintiffs' Steering Committee.

8 THE COURT: And anybody else? For the trustee?

9 MR. GOTTFRIED: Michael Gottfried, your Honor.

10 THE COURT: Mr. Gottfried.

11 MR. COREN: Good afternoon, your Honor. Michael
12 Coren, co-chair Official Creditors' Committee.

13 THE COURT: Corey?

14 MR. COREN: Coren, your Honor.

15 MS. TAYLOR: Kiersten Taylor, your Honor, Creditor's
16 Committee.

17 THE COURT: Okay. Now the defendants.

18 MR. FERN: Good afternoon, Judge. Frederic Fern,
19 special counsel for the trustee.

20 MR. GAYNOR: Good afternoon, your Honor. Robert
21 Gaynor for the individual defendants.

22 MR. MORIARTY: Matthew Moriarty for Ameridose.

23 THE COURT: Anybody else that needs to be recorded?

24 MR. SPEARING: Good afternoon, your Honor. Scott
25 Spearing for Liberty Industries.

1 THE COURT: That's it.

2 MR. SCHRAMEK: Your Honor, Adam Schramek for the
3 Saint Thomas and the Ascension Parties.

4 THE COURT: Anybody else?

5 MR. WALTON: Your Honor, Ken Walton for ARL.

6 THE COURT: That's it.

7 MR. ORLANDO: Steven Orlando for BKC Clinic and CCM
8 Clinic.

9 THE COURT: Do you have a motion to argue?

10 MR. ORLANDO: No.

11 THE COURT: Let me get only the names of people who
12 are actually going to argue. Anybody else?

13 (No response.)

14 THE COURT: Okay. Now, Ms. Johnson's agenda put at
15 the head of it -- and, of course, I've always do what she
16 says -- the hearing on motions.

17 So, the Ascension Parties' motion to certify pursuant
18 to Rule -- enter judgment pursuant to Rule 54. Do I need to
19 hear argument on that?

20 MR. SCHRAMEK: Your Honor, Adam Schramek for the
21 Ascension Parties.

22 We're certainly here to provide argument, if you
23 would like to hear it. We did file the papers. We actually
24 think it might be helpful to make a few points in argument if
25 you would entertain us.

1 THE COURT: Go ahead.

2 MR. SCHRAMEK: Your Honor, there were --

3 THE COURT: But don't take more than ten minutes,
4 please.

5 MR. SCHRAMEK: It won't be, your Honor.

6 Would you like me to go to a microphone?

7 THE COURT: That is probably a good idea, simply
8 because the people on the telephone won't hear you unless you
9 do that, and do be seated. It's easier to use the microphone.

10 MR. SCHRAMEK: Your Honor, the Ascension Parties did
11 file a motion pursuant to Rule 54(b) to make it a final order,
12 this Court's August 29th, 2013 order.

13 As the Court may require, you dismissed the Ascension
14 Parties, finding there had been no vicarious liability claims
15 asserted against them as a matter of law on the pleadings
16 under alter ego or agency theory.

17 THE COURT: What makes Ascension different from any
18 other defendant who might get out of the case on such a
19 motion?

20 MR. SCHRAMEK: Your Honor, the --

21 THE COURT: If it isn't different or even if it is
22 different, we're going to have a whole series of Rule 54
23 decisions?

24 MR. SCHRAMEK: Well, your Honor, there are a couple
25 of things, I think, that are important. One is really which

1 is known as the finality prong, which is are you really out?
2 Have all claims against you been dismissed or only partial
3 claims been dismissed?

4 I believe most of the parties that have filed motions
5 to dismiss, not all of the claims have been dismissed. So,
6 they're still in the proceeding. That's a very different
7 position from where Ascension is in.

8 Now, if another party, in fact, were to prevail on a
9 motion to dismiss and had been filed in multiple lawsuits in
10 this MDL proceeding, we think it is important in fairness and
11 equity, which is one of the considerations, for that party to
12 have the opportunity to get out, to not have to be in this
13 very complicated MDL process, have the status hearings, and
14 wait until one day when maybe their case will be selected as a
15 Bellwether or beyond.

16 Right now Ascension is the only party in that
17 position. So, I don't think it creates this precedent of
18 everyone filing these motions.

19 And if you look at the second prong, your Honor,
20 which is no just reasons for delay, there is no substantial
21 interrelation between the remaining claims and the dismissed
22 claims. That's the other thing the courts really look at.

23 As this Court might remember, in the *Nigro* case,
24 which was decided and went up to the First Circuit, the First
25 Circuit laid out those elements and affirmed this Court's

1 decision to let one party out while one individual --

2 THE COURT: That's the case of the lawyers who got
3 sued?

4 MR. SCHRAMEK: That's right, your Honor. One of the
5 lawyers was a special master. It was a will contest, and you
6 decided they were immune from suit and, accordingly, let them
7 out and said, look, they had a -- you know, this is a
8 reputational issue, right. The lawyer that was involved in
9 this lawsuit has a problem with his reputation.

10 THE COURT: It was an insanity case.

11 MR. SCHRAMEK: I wasn't there, so I can't tell you
12 that, your Honor.

13 But we do think there are some reputational issues.
14 They're very different, of course, but there are reputational
15 issues within a national healthcare system like Ascension
16 continuing to be involved in and named and getting all the
17 dockets on an MDL, which this Court has decided that there are
18 no claims against it. So, we do believe both under equities
19 and no just reason for delay, that that's appropriate. And,
20 importantly, there's no relationship -- factual relationship
21 between the remaining claims.

22 The claim against Ascension, which is, you know, the
23 parent and grandparent company out of St. Louis, Missouri,
24 this Court, I think properly, concluded that there was just no
25 basis to hold them responsible for the -- you know, based

1 merely on the fact that they owned this hospital in Tennessee.

2 So, the remaining facts are going to be the
3 relationship between the hospital and the relationship between
4 the clinic, which was on the hospital grounds, Stop & See.
5 So, the case is going forward on an agency theory about the
6 relationship between the hospital and the clinic. What did
7 the signage look like? What did the name tags the doctors
8 have say? All of those sorts of things the PSC has focused on
9 that have nothing to do with their theory as to how they could
10 somehow pierce the veil all the way up to St. Louis.

11 The only thing that they focused on or could point to
12 this Court when we had that hearing was the fact that on the
13 federal tax forms, Ascension listed Saint Thomas, you know,
14 Network or Health System as an owned entity or affiliated
15 entity. This Court said, look, that's not enough. Do you
16 have anything or don't you? They didn't have anything.

17 So, discovery won't help them. There's nothing left.
18 There's no relationship between the claims remaining and the
19 claims dismissed and, accordingly, we believe, under the
20 precedent of the First Circuit, under cases we cited, that
21 this is the right decision that we would ask the Court to
22 enter to allow Ascension to be out of this MDL.

23 If the PSC wants to appeal that issue, let them
24 appeal it now. Let that matter be resolved, once and for all.
25 We think the First Circuit would, of course, clearly affirm

1 this Court's decision based on what their arguments were, but
2 if they want to test it, let them test it now. Let's not wait
3 for months and maybe years until all 41 cases in which
4 Ascension was sued and which this Court has decided those 41
5 cases did not state a claim, make them continue to participate
6 in the process. Thank you, your Honor.

7 THE COURT: Thank you.

8 Anyone opposing the motion?

9 MR. GASTEL: Ben Gastel on behalf of the PSC, your
10 Honor. I'll be very short.

11 I think missing from Ascension's argument is the
12 strong federal policy that disfavors piecemeal appellate
13 process. Here, we have Ascension who is only one piece of the
14 liability puzzle as it relates to the Saint Thomas Clinic. We
15 did assert vicarious liability claims against Ascension, but
16 Ascension's ultimate liability in this case is inexplicably
17 intertwined with the liability of Saint Thomas Clinic and the
18 Saint Thomas Entities.

19 Those cases remain pending before this Court and are
20 ongoing in discovery. We think that the overlap of the claims
21 against Ascension and the overlap -- the ongoing claims
22 against Saint Thomas Clinic and the Saint Thomas Entities make
23 this particular issue fall squarely within that federal policy
24 against piecemeal litigation and because the cases against
25 Saint Thomas Clinic and Saint Thomas Entities are ongoing, we

1 would maintain that Ascension should simply wait until the
2 cases against those other entities are fully resolved before
3 -- so that the entire sort of liability puzzle as it relates
4 to the Saint Thomas Clinic, the Saint Thomas Entities and
5 Ascension can go up on appeal, if necessary, to the First
6 Circuit.

7 THE COURT: Thank you. Anybody else?

8 MR. SCHRAMEK: Just in reply, your Honor -- oh, I'm
9 sorry. In reply, they are factually distinct issues. The
10 issues of Saint Thomas and the clinic have nothing to do with
11 the issue of whether the Ascension parent can be held
12 responsible, and if this Court were to look at the case they
13 cited for their support, *Spiegel vs. Tufts University*, that's
14 a case where a professor was denied tenure and -- I believe it
15 was a she -- asserted breach of contract, civil rights claims
16 as well as misrepresentation claims and three of the -- two of
17 the three claims were dismissed and the remaining claim was
18 the civil rights claim.

19 And what the First Circuit said is, Wait a minute.
20 The civil rights claim and the breach of contract claim, they
21 were all based on the same facts. They incorporated by
22 reference the same fact section. It was all saying she should
23 have made tenure and what were the facts and circumstances of
24 her not making tenure.

25 In fact, your Honor -- and so, they said, Well, that

1 one doesn't make sense to sever off and appeal immediately the
2 other causes of action when the same factual nucleolus was
3 still being tried. That's not what we have here. That was
4 the only case that they cited for that inexplicably
5 intertwined. We have a very different situation, with a
6 completely different party. It has nothing to do with the
7 claims left here, which is the agency claims between the
8 clinic and the hospital.

9 THE COURT: Thank you. I will take the papers on it.

10 The next motion on the list is that which the
11 Plaintiffs' Steering Committee appealed from a decision by
12 Judge Boal. Is there any question but that the standard of
13 review is clear error?

14 MR. CHALOS: Your Honor, that's me, Mark Chalos for
15 plaintiffs.

16 Your Honor, we can accept that that is the standard.

17 THE COURT: Okay. I think what I would like to do
18 with this is to order the defendant party in this case, Saint
19 Thomas Entities, to produce the trust agreement for an in
20 camera inspection by the Court and then I will deal with the
21 motion.

22 So, I'm not sure it's useful to have argument now
23 until I know really what it is we're talking about. And the
24 review will be on the basis of clear error. Any problem with
25 that?

1 MR. SCHRAMEK: Well, your Honor -- this is Adam
2 Schramek.

3 I was prepared to argue the motion today as well on
4 that point, and I would simply say that the review being clear
5 error, I believe it should be made on the record that was
6 actually presented to Judge Boal and I don't think the PSC
7 should have an opportunity to go and have additional discovery
8 or an additional procedure that they never asked Judge Boal
9 for. They asked -- we provided a briefing. We had an
10 affidavit. They never asked Judge Boal for us to submit
11 documents in camera. They went forward with Judge Boal on the
12 record that they developed and we believe it's having been
13 referred to Judge Boal, it's appropriate for the clear-error
14 review to be on that record.

15 THE COURT: Well, then I'll have her do the review of
16 the document. I would still ask you to produce the document
17 and then she can review it and then it can come to me after
18 that, okay?

19 MR. CHALOS: Okay with us.

20 THE COURT: So, would the defendant please review it
21 for in camera inspection by Judge Boal. And the case is back
22 in your hands.

23 Okay. Then, finally, Liberty Industries' motion for
24 reconsideration of the denial of summary judgment.

25 MR. SPEARING: Yes, your Honor.

1 THE COURT: I understand the difficulties you have
2 with the short time that we gave the other side, but that
3 short time was dictated by Liberty's constantly telling us how
4 we're going to go into the bankruptcy the next minute and we
5 were simply trying to accommodate the very tight schedule
6 before Liberty would go under.

7 MR. SPEARING: Yes, your Honor. I understand that.
8 The timing is just one part of the issue that we
9 would like to raise in the motion for reconsideration.

10 THE COURT: You go right ahead.

11 MR. SPEARING: Thank you, your Honor.

12 The most important part of this, if you look at it,
13 is what Liberty believes to be the -- not only was the
14 opposition untimely by the PSC, but it was based, in large
15 part, upon this affidavit of Dr. Austin, Jr., and we believe
16 that affidavit was inadmissible for a variety of reasons.
17 Most importantly was it was unsworn to. It was not subscribed
18 under the pains and penalties of perjury and it didn't meet
19 the requirements of Rule 56, nor did it meet the requirements
20 of 28 U.S.C. 1746.

21 If you look at the way the affidavit was drafted,
22 your Honor, by Dr. Austin, there's no argument, I don't think,
23 that the affidavit was not signed under the pains and
24 penalties of perjury. I don't believe the plaintiffs say
25 that. What they say in their opposition is basically that

1 that's just a mere formality and the --

2 THE COURT: Excuse me one moment.

3 Did anybody on the telephone hear? Can they hear the
4 argument? Is anybody there?

5 UNIDENTIFIED SPEAKER: Very soft, your Honor.

6 THE COURT: I'm sorry, I forgot to ask you to find a
7 -- does the witness box one work, Lisa?

8 COURTROOM DEPUTY CLERK URSO: Yes, Judge.

9 THE COURT: So, maybe you can just go over there.

10 MR SPEARING: Sure.

11 THE COURT: Thank you very much. Sorry about that.

12 UNIDENTIFIED SPEAKER: Thank you, your Honor.

13 THE COURT: The next time I'm negligent like that,
14 just whistle.

15 MR. SPEARING: May I sit, your Honor?

16 THE COURT: Of course.

17 Before you began to hear what counsel had to say, he
18 described the inadequacies of the affidavit, which was neither
19 sworn and in various other respects, he says, defective. He
20 will now continue with that list.

21 MR. SPEARING: Thank you, your Honor.

22 Basically, under Rule 56(c)(4), a declaration must be
23 sworn to or otherwise subscribed under the pains and penalties
24 of perjury, it must be based on personal knowledge, and it has
25 to have facts that would be admissible, and we believe that

1 the Austin affidavit fails on all three of those levels.

2 As I said originally, the affidavit was not
3 subscribed to under the pains and penalties. That's not a
4 mere formality, as the PSC would have us think. I think the
5 clear law in this circuit and this district is that a sworn
6 affidavit -- if it's not sworn to by oath, then it has to be
7 under the pains and penalties of perjury. It's the only way
8 in which evidence can be admissible for the proceeding.
9 Without that the affidavit must fail because there's no truth
10 aspect to the affidavit.

11 The affidavit also fails because it's very difficult
12 to see how it's based on the personal knowledge of Dr. Austin.
13 If we look back, the affidavit is -- or the declaration is
14 based entirely -- or almost entirely on the observations made
15 by Dr. Austin and his father, who is also named Dr. Austin,
16 during the plaintiffs' visit to the NECC facility back in
17 December of 2012.

18 As you read through the affidavit, it's very
19 difficult to see what is Dr. Austin, Jr.'s observation as
20 compared to that of his father, and if you go through there,
21 their opening paragraph -- or the opening paragraphs, one of
22 them says, "In preparation of this declaration, I considered
23 the observations made by Dr. Philip Austin, Austin, Jr.,
24 Austin, Sr., and me."

25 Other parts of the declaration go on to say that,

1 "Our observations led us to conclude that the contaminated MPA
2 would most likely be compounded in the main area of the 2006
3 clean room."

4 It also goes on to say that, "During our inspection
5 of the clean room, although we have been provided with
6 additional information since our initial investigation, we
7 still believe that the defects in the design and construction
8 of the clean rooms played a key role in the contamination of
9 the vials of the MPA."

10 I would submit, your Honor, that Dr. Austin, Jr.,
11 cannot incorporate his father's observation or conclusions
12 into his declaration and that's just not proper, and for that
13 reason, the declaration must also fail.

14 The other thing that -- because this declaration is
15 made upon the observations made during this site visit, Dr.
16 Austin, junior or senior, has no basis for any information
17 prior to that date, December 2012. Therefore, they have no
18 information -- personal information on which they can say what
19 the clean rooms looked like when they were delivered to NECC
20 by Liberty back in '06 and '08 or any time before December
21 2012.

22 So, these conclusory statements made in Dr. Austin's
23 declaration that Liberty knew or should have known what the
24 rooms are going to be used for or that -- where the MPA was
25 actually compounded, he has no basis for those statements and

1 they can't be taken into effect, it's our opinion, in this
2 declaration.

3 I think the most telling aspect of the declaration is
4 Dr. Austin's conclusion where he states, "Due to a number of
5 possible causes for contamination during the compounding
6 process, it is unlikely that any definitive path of fungal
7 contamination from an originating source or its final
8 destination in the vials will be able to be identified."

9 So, clearly, Dr. Austin cannot give them the causal
10 connection between anything Liberty did to cause this alleged
11 contamination. He states right out in his declaration that he
12 cannot make such a statement. Therefore, it goes against the
13 PSC's conclusions that Liberty is liable for anything in this
14 matter.

15 It seems to me, your Honor, that the declaration is
16 defective for the various reasons we said. It's our hope that
17 the Court will reconsider its ruling on the motion for summary
18 judgment and rule in favor of Liberty Industries and the
19 summary judgment in favor of Liberty. Thank you.

20 THE COURT: Thank you.

21 Who will argue against? Ms. Johnson?

22 MS. JOHNSON: I will, your Honor.

23 First, we'll observe that the standard for
24 reconsideration on a motion for summary judgment requires
25 manifest error of law or newly-discovered evidence.

1 THE COURT: An affidavit that is unsigned, it's sort
2 of a manifest error of law, isn't it?

3 MS. JOHNSON: It's not great, your Honor, but let me
4 tell you why that doesn't matter.

5 In terms of the affidavit itself, the Court will
6 remember, which you alluded to earlier, the procedural posture
7 here is a bit unusual. Expert reports are not formally due
8 according to the case management schedule for some months yet.

9 The Court asked -- ordered the PSC to oppose
10 Liberty's motion for summary judgment within five days, which
11 was appropriate given the circumstances. The PSC has no
12 complaint with that order, your Honor.

13 However, given that short turnaround, it did mean we
14 had to act with all due dispatch. The lack of a signature was
15 an oversight and it is one that can be easily corrected, your
16 Honor, and the PSC is happy to do that. I'm remiss for not
17 having brought a signed copy with me today, frankly, but that
18 can be corrected.

19 In terms of Dr. Austin's personal knowledge, both Dr.
20 Austins were present personally during the inspection of the
21 NECC facility. Both Dr. Austins are experienced with clean
22 rooms. One Dr. Austin is younger than the other and may,
23 arguably, be the less experienced, but I'll note that Liberty
24 has not filed a *Daubert* motion or a formal motion under Rule
25 702 --

1 THE COURT: They haven't had time.

2 MS. JOHNSON: Excuse me?

3 THE COURT: They haven't had time.

4 MS. JOHNSON: That may well be, your Honor.

5 We would suggest that even without Dr. Austin's
6 affidavit, that there are material questions of fact presented
7 by the issue and we think, frankly, that the Court's well-
8 reasoned decision earlier should stand.

9 To be blunt, we don't see anything newly presented in
10 either the proposed reply or the motion for reconsideration
11 which should warrant the Court reconsidering.

12 THE COURT: Thank you.

13 MR. SPEARING: May I reply briefly, your Honor?

14 The fact that it's been now three weeks and we
15 haven't seen any kind of sworn affidavit from this gentleman I
16 think is telling.

17 The lawyers in the PSC committee know how to file a
18 declaration that's proper. This one was not proper. It's not
19 proper now, and there are time revisions involved. There's
20 time standards involved here. The PSC never seems to make any
21 of the time elements here. They never meet the time
22 requirements.

23 It seems to me that the fact that they could have a
24 signed statement from this gentleman doesn't really get them
25 over the hurdle, and without the declaration, your Honor, the

1 motion -- the opposition must fail and Liberty's motion must
2 succeed. There is no disputed fact without this purported
3 declaration from the purported expert.

4 THE COURT: Thank you. I will take these papers as
5 well.

6 MR. SPEARING: Thank you, your Honor.

7 MR. BRACERAS: Your Honor, on behalf of Unifirst,
8 just one note.

9 We are not opposing the summary judgment motion here,
10 but to the extent the Court does reconsider its order and
11 allows Liberty's motion for summary judgment, we would just
12 like to note for the record that we would like Liberty to
13 remain in the case as a nonparty for the purpose of
14 allocating --

15 THE COURT: I'm sorry, you would like what?

16 MR. BRACERAS: Liberty to remain in the case as a
17 nonparty for the purpose of allocating fault at trial.

18 (Whistling.)

19 UNIDENTIFIED SPEAKER: We can't hear.

20 (Laughter.)

21 THE COURT: For this very important argument, you
22 want the nonparty to be available --

23 MR. BRACERAS: I just want to note --

24 THE COURT: -- for assignment of liability and
25 damages?

1 MR. BRACERAS: I --

2 THE COURT: Wait a minute. You can't -- you won't be
3 heard. You have to go to a microphone. There's one over here
4 by --

5 MR. BRACERAS: Thanks, your Honor.

6 THE COURT: Start again, will you?

7 MR. BRACERAS: Your Honor --

8 THE COURT: This is Mr. Braceras representing
9 Unifirst.

10 MR. BRACERAS: Yes. On behalf of Unifirst, we do not
11 object to the motion for summary judgment. We don't take a
12 position with respect to the motion for reconsideration.
13 Frankly, we don't have standing to do so, but under Indiana
14 law, there's a provision that we're required to note for the
15 record that we request that Liberty remain in the case as a
16 nonparty, even if the Court grants the summary judgment
17 motion, solely for the purpose of allocating fault at trial.
18 Basically, so that they can be on a verdict form in a
19 comparative negligent state for allocating fault.

20 THE COURT: Which they then don't pay, or what?

21 MR. BRACERAS: That's true, your Honor. Then if
22 they're dismissed, they wouldn't pay, but there is no reason
23 for the other parties that remain in the case to pay more
24 simply because they are no longer in the case.

25 So, it's not a motion on our behalf. We just have to

1 note this for the record to the extent that the Court allows
2 the motion --

3 THE COURT: Well, what is the point of that? They
4 remain a nonparty, which means that they're not really in the
5 case, but if the case goes to trial, then the jury is entitled
6 to determine whether Liberty has some fault, shares some fault
7 with Unifirst?

8 MR. BRACERAS: Exactly, your Honor.

9 THE COURT: Is that the issue?

10 MR. BRACERAS: Exactly.

11 THE COURT: But as a nonparty, they would not then be
12 liable for their fault?

13 MR. BRACERAS: Not if they were already dismissed by
14 this Court out of the case.

15 THE COURT: Which if the motion is allowed would be
16 the case, right?

17 MR. BRACERAS: That's correct.

18 THE COURT: So, the only object of this would be to
19 reduce the amount that Unifirst pays without -- and the
20 plaintiffs pay the rest --

21 MR. BRACERAS: And there's caselaw --

22 THE COURT: -- or they eat the rest.

23 MR. BRACERAS: And, your Honor, there's caselaw,
24 *Rausch vs. Reinhold*, Indiana Court of Appeals, 1999 decision
25 directly on this, your Honor. So, again, we don't --

1 (Telephone ringing.)

2 THE COURT: Excuse me one second.

3 Is this our phone?

4 COURTROOM DEPUTY CLERK URSO: No, Judge.

5 MR. BRACERAS: We don't think the Court has to decide
6 anything at this time. We just need to put this on the record
7 and --

8 THE COURT: So, I don't have to do anything with it?

9 MR. BRACERAS: No, you do not.

10 THE COURT: Okay. Do you wish to say anything about
11 that?

12 MR. SPEARING: I'm not so sure I read the statute the
13 same way.

14 I understand that Liberty could be on a jury verdict
15 form once it's dismissed from the case. I don't think it
16 needs to be -- continue to be a part of the MDL in order to do
17 that, but I suspect we could re-argue about that after we win
18 and we do a 54(b) motion.

19 THE COURT: Well, in that case, why don't we just
20 leave it that you two will work this out?

21 (Laughter.)

22 THE COURT: I'm serious. I mean, if there's nothing
23 that I have to do, then it's -- Liberty agrees to work it out
24 with Unifirst.

25 MR. SPEARING: Your Honor --

1 THE COURT: Wait one minute.

2 Is there any reason why that couldn't be done?

3 MR. SPEARING: No, your Honor. If we prevail on the
4 motion for summary judgment, we could work that out.

5 MR. GASTEL: Your Honor, this is Ben Gastel on behalf
6 of the PSC.

7 I think this issue raises very complex issues under
8 both Indiana law and also raises an *Erie* issue.

9 THE COURT: But if we don't have to do anything about
10 it, then why do we worry?

11 MS. JOHNSON: I think that's precisely right, your
12 Honor. The PSC's position would be that this is not the time
13 to be deciding the effect of a summary judgment dismissal on
14 the contributory fault issue.

15 THE COURT: I'm not deciding it. They're going to
16 work it out and whatever -- however they work it out, there's
17 nothing I can say about it.

18 MR. SCHRAMEK: Your Honor, this is Adam Schramek for
19 the Saint Thomas Entities.

20 Tennessee law has a similar issue to what Mr.
21 Braceras raised. We also filed a motion. We called it a
22 motion --

23 THE COURT: So, we should say Ascension is going to
24 be in as a nonparty if --

25 MR. SCHRAMEK: No. No. This is --

1 (Laughter.)

2 THE COURT: You have backed yourself into another
3 corner.

4 MR. SCHRAMEK: If the PSC wants to list them as a
5 non-recoverable party, sure, we'll put them on the jury
6 charge.

7 But the point of this process, your Honor, is because
8 under the laws of Tennessee, in particular, and Indiana as
9 well, you're only supposed to recover the allocation of fault
10 attributable to each defendant and/or nonparty who may bear
11 responsibility.

12 The reason we filed our motion for clarification and
13 we are asking the Court for relief, the relief we're asking
14 for is essentially a notation in whatever order this Court
15 enters, whether it be a footnote or reference, that says this
16 order on summary judgment between the PSC and Liberty has no
17 effect on any other party or no effect on the Saint Thomas
18 Entities, and the reason for that, your Honor, is because,
19 one, Liberty is not a defendant in any of our cases. So,
20 they've never been sued, Liberty, in our cases, in the
21 Tennessee cases. So, this summary judgment that's being
22 filed, we didn't have standing to participate in. We haven't
23 argued. We haven't put forward --

24 THE COURT: Well, then why worry about it if they're
25 not in any of your cases?

1 MR. SCHRAMEK: Well, your Honor, the concern was, PSC
2 -- we reached out to them about this issue and they would not
3 necessarily agree to that. They --

4 THE COURT: Agree to what?

5 MR. SCHRAMEK: -- preserve the argument that perhaps
6 the summary judgment does preclude us from putting them on the
7 jury charge. That was the issue we raised with the PSC, and
8 we said, Look, we don't have standing. We can't do this. So,
9 we filed our motion for clarification to say, your Honor,
10 whatever you do, we just want it to be without prejudice to
11 our rights in our cases because we're listing them as a
12 nonparty, and we may be --

13 THE COURT: Well, what do you want me to do?

14 MR. SCHRAMEK: Again, your Honor, we would simply ask
15 that in any order -- to the extent you would grant Liberty's
16 motion, we simply wanted something that would -- one sentence
17 in there or a footnote that says this in no way affects the
18 Tennessee cases in which Liberty has not been sued as a party.

19 MS. JOHNSON: If I may, your Honor.

20 MR. SCHRAMEK: That's it, your Honor. So that we
21 have a fight later down the road as to what your order meant.
22 We're just trying to bring it up now to avoid a big fight
23 later on collateral estoppel and --

24 THE COURT: And to avoid paying anything.

25 Mr. Braceras, see what you've done.

1 MR. BRACERAS: Sorry, but we also want to avoid
2 paying anything.

3 THE COURT: Of course.

4 MR. BRACERAS: In this respect, I may agree with Ms.
5 Johnson that it's not so much a matter of Liberty and Unifirst
6 or Liberty and the Ascension Parties reaching an agreement.
7 It really is down the road what is the broader impact of any
8 ruling on the summary judgment, and I think what the -- not to
9 speak for the Ascension Parties or Saint Thomas, but I think
10 what's important for the defendants that remain in the case is
11 simply to note for the record and raise for the Court that for
12 Unifirst for all of the jurisdictions in which we're entitled
13 to put Liberty on the verdict form, we don't want to be
14 precluded from doing that, and I don't think you have to
15 decide anything at this time on that. We just want it to be
16 noted for the record that -- so that down the road we're
17 arguing this, there's not an argument by the PSC that we
18 waived this in any way by not trying to intervene in the
19 summary judgment motion. We're -- frankly, we don't have
20 standing to intervene.

21 THE COURT: Well, you may not want me to do anything,
22 but Mr. Schramek does.

23 MR. BRACERAS: He does.

24 THE COURT: Right. I'll think about it.

25 MR. SCHRAMEK: Thank you, your Honor.

1 MS. JOHNSON: If I may, your Honor, just two points.

2 The PSC's perspective is this will come up in
3 multiple situations potentially, but at this point in time the
4 issue is not ripe to be decided and when it becomes ripe, it
5 should really be briefed so that your Honor has the benefit of
6 the caselaw on point.

7 THE COURT: How is it going to come up? What's the
8 vehicle by which I will decide this?

9 MS. JOHNSON: Pretrial activity leading up to a
10 potential Tennessee trial, your Honor, would be the logical
11 place to address this issue. If at that point in time Saint
12 Thomas or Ascension wishes to list Liberty as a contributing
13 party -- contributing nonparty, I guess is the language, that
14 would be the point in time to address it.

15 THE COURT: Well, would not Ascension be in the same
16 position? Assume it gets out, then can it still be listed as
17 a non-contributing party?

18 MR. SCHRAMEK: Your Honor, that has never been raised
19 as an issue.

20 THE COURT: Well, it's been raised right now.

21 MR. SCHRAMEK: Well, let me explain --

22 THE COURT: You participated in the raising of it.

23 MR. SCHRAMEK: Let me put a finer point on it, Judge,
24 if I could, and see if I can maybe bring a little focus --

25 THE COURT: I'm just trying to understand it.

1 MR. SCHRAMEK: In our cases in which Ascension was a
2 party, you have adjudicated that they have no liability and
3 should be dismissed. We are bound by that decision. They're
4 not going on the jury charge. Liberty has not been --

5 THE COURT: But Liberty is in the same position.

6 MR. SCHRAMEK: And that's my --

7 THE COURT: Assume its motion for reconsideration is
8 allowed. Then it is in precisely the same position that
9 you're in.

10 MR. SCHRAMEK: Well, here's the difference. Those
11 summary judgments are not pending in our cases. We didn't
12 have the chance to respond. I didn't have a chance to give
13 you my expert's signed declaration or evidence as to why
14 Liberty should not be dismissed.

15 Quite frankly, your Honor, we don't want to be bound
16 by what the PSC has done. If this claim gets dismissed for
17 the way they've developed it and the arguments they've made on
18 liability, we want the opportunity to make our own arguments,
19 present our own evidence and present our own experts. That's
20 the difference.

21 They've had their chance and you're making the
22 decision. We haven't had the chance. We didn't participate
23 in this process and if they were wrong, we want to make sure
24 we have the chance to put forward the evidence perhaps they
25 should have.

1 THE COURT: But the basis of the motion -- the
2 primary basis of the motion of Liberty is that the evidence
3 that was submitted was improperly submitted and, therefore,
4 they're entitled to summary judgment because none of that
5 evidence has -- can count for anything because it was
6 improper.

7 MR. SCHRAMEK: That's right.

8 THE COURT: Doesn't that put Liberty in the same
9 position as you?

10 And it is in that position that Mr. Braceras was
11 arguing that Liberty should remain as a non-contributing party
12 simply to reduce their liability.

13 MR. SCHRAMEK: The key distinction here is that with
14 respect to the cases in which the motions were filed and the
15 decisions are made, everyone is bound by those decisions, but
16 that doesn't necessarily -- quite frankly, your Honor, if the
17 PSC has not put forward the evidence and arguments to
18 establish liability in response to these motions for summary
19 judgment, then this Court would, I believe, be correct in
20 dismissing it from those cases.

21 But in the Tennessee cases, if we put forward
22 evidence and expert testimony that established actually they
23 do bear some fault, the PSC simply didn't provide it or
24 provide it to you when the issue was ripe for decision, then
25 they've lost their chance at a potential recovery.

1 Again, we're saying we believe -- and I'll go on the
2 record. We believe Liberty has responsibility here. We
3 believe they have liability. I participated in the deposition
4 of two of their witnesses. We didn't have the chance to brief
5 to the Court why we think they have liability. So, that was
6 really the motion for clarification.

7 So, to the extent this Court believes that this
8 decision is going to affect everybody, once and for all,
9 that's not how we see it. That's not how we believe the
10 procedure is, but if that's the case, we wanted the
11 opportunity to participate or a footnote that says this
12 decision only applies to the cases in which it was filed and
13 does not impact in any way other parties who did not
14 participate in the briefing.

15 THE COURT: Okay. I think I understand what you're
16 saying. I'll do the best I can.

17 MR. SPEARING: Just one thing, your Honor.

18 This motion for summary judgment we're talking about
19 is only in this Indiana case, Lambert, and the 98 other -- 99
20 other Indiana cases. No Tennessee motions have been filed
21 yet. They may be filed in the future, at which time Ascension
22 or whoever wants to can do what they have a right to do. I
23 think with respect to this one, this is a non-issue, except to
24 the extent Mr. Braceras wants to bring that issue up.

25 THE COURT: Okay. Thank you all.

1 Now, Ms. Johnson, that brings me to another point
2 that I've been concerned about, which is that we get this
3 series of motions to dismiss which are, admittedly, based on
4 state law for the most part, but the state laws are quite
5 similar and I would like to find some mechanism whereby we
6 don't get another one every month. There has to be a way in
7 which we can combine the state defendant -- the defendants'
8 motions to dismiss based on state laws that are very similar,
9 which we can deal with one opinion -- well, there's some
10 differences as they may exist, but I would like to cut down on
11 the number of motions to dismiss.

12 MS. JOHNSON: Yes, your Honor, and that's actually
13 one of the things I was hoping to address with the Court
14 today, so I'm glad you raised it first. I think there are two
15 things to address on that:

16 One is that plaintiffs' counsel are actually in the
17 process of speaking with defense counsel who are filing new
18 motions to dismiss about whether or not the Court's earlier
19 decisions on similar state law issues may functionally moot
20 some of the claims that are presented in these new motions to
21 dismiss. So, that is a meet-and-confer process that's one
22 thing that can and is being done here.

23 Something else that could be done would be a revised
24 scheduling order for filing motions to dismiss that attempted
25 to bring some sort of order and timing to this so that they're

1 not quite as piecemeal.

2 In terms of the second, that's another effort that
3 the PSC is undertaking to think about ourselves first and then
4 discuss with defense counsel what may be appropriate in that
5 respect.

6 THE COURT: There's another piece to this. There are
7 some claims in the complaint that probably should go.

8 MS. JOHNSON: Yes, your Honor.

9 THE COURT: And it may be that the Plaintiffs'
10 Steering Committee needs to get rid of some additional claims
11 in addition to assault and battery and some of the others that
12 are gone and that they agree are gone.

13 MS. JOHNSON: Yes, your Honor, I agree, and that
14 would be a third piece that we would be was looking at.

15 THE COURT: Okay.

16 MS. JOHNSON: The PSC had hoped to present to the
17 Court -- I'm sorry. The PSC will present to the Court before
18 the next status conference something along the lines of a
19 status report that will make some suggestions for how some of
20 these issues may be dealt with. We expect that that will
21 include an identification of cases on file in the MDL,
22 including defendants who are still part of the ongoing
23 litigation in the MDL. It will, hopefully, make some
24 observations about scheduling and some changes that may or may
25 not be needed, in addition to potential amendments to the

1 master complaint.

2 So, we will get that to the Court well in advance of
3 the next status conference and much of that will be as a
4 result of meet-and-confers with defendants to make sure that
5 we've included their perspectives as well to the extent that
6 we can agree.

7 THE COURT: Well, that would be very helpful and I
8 will thank you all at the appropriate time you've done it.

9 MS. JOHNSON: Thank you, your Honor.

10 MR. COREN: Your Honor, I propose that -- for
11 example, yesterday Box Hill, which has -- which is a small
12 clinic outside of Aberdeen, Maryland, which has a fair number
13 of death cases and \$3 million aggregate policy, filed a joint
14 motion to dismiss which raises literally, once again, the same
15 issues you decided in Tennessee, decided on Premier, decided
16 this yesterday or this morning in Ohio and other cases, and it
17 just seems that -- you know, we try to say would your Honor
18 entertain a stipulation where the parties who have this could
19 say, Look, your Honor's rulings in the proceeding -- for
20 example, battery, your Honor's decision --

21 THE COURT: It's dead wrong, but we won't battle it
22 now.

23 MR. COREN: We won't -- exactly right. So that way
24 we don't have to, you know, press upon your court's and your
25 clerk's time and have -- even doing the same opinion again,

1 and if you could order the parties to sit down who filed these
2 things, to see if we could narrow those things down, I think
3 between now and in addition to what the PSC is doing, those
4 who have these cases, like my firm in Box Hill and Pete
5 Angela's firm, which have all the cases, we could -- you know,
6 if we're told to do it and get it done and see if we can get
7 it done by next month, I think we can make some progress and
8 staying our need to respond to the motion.

9 THE COURT: I think I understood Ms. Johnson
10 correctly to suggest that she would consult with counsel for
11 the defendants and come up with a protocol for dealing with
12 these motions in a more -- well, expeditious and efficient way
13 than we have been. So, I invite you to participate in her
14 effort to do that.

15 MR. COREN: And we have.

16 THE COURT: And I regard it as your effort as well.

17 MR. COREN: Yes. And that's exactly the way we
18 treated it. It's been hand-in-glove working with the PSC as
19 well as the individual law firms who have had the cases from
20 -- it's a concerted effort there.

21 Meanwhile, is it fair to say that until we work that
22 out, our responses to those motions on behalf of plaintiff are
23 held in abeyance?

24 THE COURT: Yes.

25 MR. COREN: Thank you, your Honor.

1 THE COURT: Okay. Ms. Johnson, now we go to your
2 agenda.

3 MS. JOHNSON: Thank you, your Honor.

4 We'll start off with the status of mediation efforts.
5 As the Court is aware, we reported last time that a proposed
6 plan of reorganization had been filed with the bankruptcy
7 court. The bankruptcy court has now set a hearing on February
8 24th, which means that the deadline for the trustee to file
9 supplements announcing any additional settlements that would
10 be part of that proposed plan is the 13th of February.

11 As a practical matter, we think that means that any
12 additional settlements that contemplate contribution being
13 made to the bankruptcy pot in exchange for channeling
14 junctions, and the like, would need to be resolved by February
15 6th. So that is the internal, as a practical matter, drop-
16 dead date now for concluding and resolving mediations. There
17 are --

18 THE COURT: Are there any in the pipeline that will
19 meet that deadline?

20 MS. JOHNSON: I certainly hope so, your Honor. That
21 is the best I think I can say publicly on that.

22 THE COURT: Okay.

23 MS. JOHNSON: That brings us to Item No. 2, the
24 status of the insurance declaratory judgment actions. As to
25 the two matters that are proceeding before Judge Saylor

1 dealing with Ameridose's insurance policies, there is briefing
2 on a request for -- to lift the discovery stay on those
3 actions ongoing. That has not been decided yet, but that
4 briefing is in process.

5 There is also a discovery -- excuse me -- an
6 insurance declaratory judgment action relating to Liberty.
7 There's been an extension of time for Liberty to respond --

8 THE COURT: Where is that pending?

9 MS. JOHNSON: Connecticut, your Honor. Right,
10 Connecticut?

11 MR. SPEARING: It's in Connecticut.

12 MS. JOHNSON: Thank you.

13 There has been an extension of time for Liberty to
14 respond to the summary judgment pleading there. They now have
15 until January 28th to respond. So, we may have a further
16 update on that before the next status conference.

17 That brings us to discovery. Under 3(a), the PSC had
18 filed a motion to compel, but we have now withdrawn that
19 motion to compel. So that need not be decided at this point
20 in time.

21 And I believe Mr. Stranch wanted to just flag for the
22 Court two potential discovery issues that may or may not --
23 you may or may not see papers from the PSC on before the next
24 status conference.

25 MR. STRANCH: Good afternoon, your Honor.

1 There's a couple of things that I wanted to update
2 the Court with as it relates to discovery in the Tennessee
3 litigation that's going forward.

4 The first thing is we did withdraw the motion as it
5 relates to interrogatories. We met and conferred and there
6 were supplemental responses produced and we have agreed to
7 withdraw it.

8 However, there's still a dispute over certain
9 documents that are tied in with those interrogatories being
10 produced. And so, that will probably be briefed and brought
11 to the Court. We hope that that will be filed soon enough so
12 that it can be heard by Judge Boal in February, if Judge Boal
13 is going to set a hearing in tandem with the February
14 conference.

15 In addition to that, your Honor, we have brewing
16 another issue relating to document production in that the
17 document productions are not yet complete for any of the
18 electronically-stored information. We've received some paper
19 documents, but the -- but literally nothing from the
20 electronic production, and we've already set aside deposition
21 dates in February and March and April and --

22 THE COURT: Is this from all defendants or --

23 MR. STRANCH: This is from the Tennessee defendants.

24 We've been told -- the dates keep getting pushed
25 back. First they were going to be before Christmas, then

1 right after Christmas. Now the deadline is supposed to be
2 this Friday.

3 THE COURT: Well, it can be before Christmas again.

4 (Laughter.)

5 MR. STRANCH: Yes.

6 And, you know, if we don't have them by this Friday,
7 as we've agreed to, then we're probably going to have to file
8 a motion that will need to be heard in February as well
9 because it's going to throw off the deposition schedule that
10 we've set up and it's going to continue to introduce
11 additional delay into the case which we're hoping to avoid.

12 One last issue that we've got, and this may be
13 directed to Judge Boal. There is a dispute over the release
14 of tax information releases that the Court ordered as part of
15 the -- as part of the plaintiff profile files.

16 The PSC had understood that if someone is not
17 claiming lost wages, then there's no need to release all their
18 tax returns.

19 The defendants -- certain defendants are taking the
20 position that everyone has to do it regardless of whether
21 they're claiming lost wages or not. And so, that's an issue
22 that's going to be briefed to the Court. We've reached an
23 impasse. Unless the Court wishes to just say what the Court's
24 position on that is, but that's the issue that will be coming
25 as well.

1 THE COURT: She'll take care of it.

2 MR. STRANCH: Okay. Will those issues -- if we can
3 get them briefed before the February conference, will there be
4 a hearing with Judge Boal in February?

5 MAGISTRATE JUDGE BOAL: It depends how far in advance
6 of the February 28th hearing.

7 MR. STRANCH: Let's put it this way: How far in
8 advance do you need it fully briefed so that we can have it
9 heard in February?

10 MAGISTRATE JUDGE BOAL: I thought I wrote the date
11 down, but what is the date of the February?

12 MR. CHALOS: February 17th.

13 MAGISTRATE JUDGE BOAL: 17th. So, if possible, I
14 would like some time to review it. So, if it could be fully
15 briefed -- I don't know if you can get it done in two weeks.

16 (Discussion off the record at the Bench.)

17 MAGISTRATE JUDGE BOAL: So, when do you think you
18 would be able to file it, in the next week?

19 MR. STRANCH: Hopefully, before the end of next week.

20 MAGISTRATE JUDGE BOAL: So, it's possible?

21 MR. STRANCH: Yes.

22 MAGISTRATE JUDGE BOAL: It's hard to say without
23 seeing the papers, but we'll try to fit it in in February.

24 MR. STRANCH: We appreciate it, your Honor.

25 THE COURT: You just file it as soon as possible.

1 MR. STRANCH: We will.

2 THE COURT: And the opposition is to be done as soon
3 as possible thereafter, like about the next day.

4 MS. JOHNSON: We're getting quite good at that, your
5 Honor.

6 THE COURT: All right. Ms. Johnson.

7 MS. JOHNSON: I believe that brings us to No. 4, the
8 status of the litigation track.

9 I've already mentioned to the Court the PSC's -- that
10 the PSC will file a status report that may make some
11 additional suggestions in terms of scheduling, and the like,
12 on the litigation track.

13 To flag one thing I expect to feature prominently in
14 that status report is a need for trial dates and to be direct
15 about it, your Honor, by the next status conference, we will
16 know who is settling through the trustee's bankruptcy process
17 and who has not. We will then have a very clear sense from
18 the PSC's perspective about who the defendants are remaining
19 in the MDL and what is left to be litigated.

20 Once we have that information, we think that the best
21 way to drive this forward effectively and efficiently is to
22 set trial dates and to hold people to those trial dates to the
23 extent practical, of course.

24 THE COURT: When would you anticipate you would want
25 to have the first set of trials?

1 MS. JOHNSON: As much as I would like to say 2015, I
2 think given the realities of some discovery in these cases, we
3 may be looking at early 2016.

4 THE COURT: Really?

5 MS. JOHNSON: That's the best answer I can give you
6 today, your Honor, but I assure you that in the process of
7 sitting down to write this out, we will try and figure out a
8 way to get 2015.

9 THE COURT: You should try to do it before Christmas.

10 MS. JOHNSON: Absolutely, your Honor.

11 MR. STRANCH: We will have a case ready before
12 Christmas.

13 MS. JOHNSON: Absolutely, your Honor, we will do
14 that.

15 THE COURT: Okay. That is 2015.

16 MS. JOHNSON: Yes, Christmas 2015.

17 MR. STRANCH: Oh, yes.

18 MS. JOHNSON: Excellent.

19 That brings us, then, to 4(a). We discussed at the
20 last status conference appointing a pro se liaison. The PSC
21 is actually meeting to discuss people that have been nominated
22 for that position tomorrow. So, we hope to have a filing to
23 the Court before the next --

24 THE COURT: How many pro se's are there?

25 MS. JOHNSON: Well, it depends, your Honor, on

1 whether you're talking about people who have filed proofs of
2 claim in the bankruptcy who are pro se or whether you're
3 talking about pro se plaintiffs in this MDL.

4 THE COURT: Well, what are you talking about?

5 MS. JOHNSON: Well, that's part of the discussion,
6 frankly, your Honor. There is a need we think for
7 coordination with both. There may be some mechanisms in the
8 bankruptcy that already allowed for that to be done, but
9 that's part of the discussion.

10 But, in any event, we hope to provide you with a
11 submission asking for appointment of someone to that role and
12 a definition of what that role would be in the very near
13 future.

14 THE COURT: Okay.

15 MS. JOHNSON: 4(b). The PSC had submitted some
16 letter inquiries to the Court about the possibility of a
17 special master appointment, and the Court had issued an
18 electronic order suggesting that it may be looking into
19 potential appointments there. So, we wanted to share with you
20 by way of an update.

21 The trustee and the Creditor's Committee and the
22 Plaintiffs' Steering Committee have been looking for, and we
23 think have a recommendation, as to who an appropriate special
24 master may be there, but we're also very interested in hearing
25 from the Court if the Court has a suggestion of its own.

1 The timing of that is in line with what we have
2 discussed previously, which is if the drop-dead date for
3 settlement is February 6th, that would really be the drop-dead
4 date to identify a special master as well. We would hope that
5 if the Court had news on that sooner than February 6th would
6 be better, but, in any event, that would be sort of the
7 timeframe.

8 THE COURT: Well, is there any reason not to let you
9 know today who Judge Boal is thinking of?

10 MS. JOHNSON: No. That would be wonderful, your
11 Honor.

12 MAGISTRATE JUDGE BOAL: So, we had -- I understand
13 that the PSC had initially proposed that I do it. That raised
14 certain issues with whether I could continue participating in
15 discovery as well as the settlement process.

16 So, after discussing it with Judge Zobel, we thought
17 that Magistrate Judge Neiman might be an excellent candidate.
18 He has now retired as a regular magistrate judge, but has been
19 called back on recall. So, he is available. He would be
20 interested. He has more time than if he has a full complement
21 as a magistrate judge and he wouldn't cost the parties
22 anything, and he's excellent, too, in my humble opinion.

23 So, that seemed to me -- or to us a good possibility.
24 Obviously, we will need to give notice to everybody.

25 I think some of the issues that are not resolved that

1 I was concerned about but I think that everybody could fashion
2 a solution to are whether or not his decision as -- his
3 decisions as the settlement administrator would need final
4 approval from Judge Zobel.

5 As I look at the enabling statutes, 28 U.S.C. 636 for
6 magistrate judges or Federal Rule 53 of Civil Procedure or the
7 local magistrate judge rules, it seems to me that Judge Zobel
8 would need to sign off if this is going to go through a court
9 procedure on any final determination -- well, I guess "final"
10 would be the wrong word, but any determination made by
11 Magistrate Judge Neiman. How that was reviewed by Judge Zobel
12 I think is open to discussion under what is standard. If he's
13 appointed as a special master, I think there's a possibility
14 of full evidentiary hearings potentially on his findings, but
15 I think there are ways to streamline his decision-making
16 process for Judge Zobel's review. So, that was our thinking.

17 THE COURT: But I think you also mentioned that you
18 thought that the review process, even by a private person,
19 would be subject to some kind of review by the Court.

20 MAGISTRATE JUDGE BOAL: Yes, I agree.

21 THE COURT: So, I think there's not a substantial
22 difference between the magistrate judge doing this and
23 somebody in the private sector who you choose, at least in
24 that respect.

25 MS. JOHNSON: Let me first thank the Court for going

1 through that process and for providing us.

2 My initial reaction -- but it's only that, I speak
3 only for myself -- that sounds like a wonderful vehicle. I
4 would be honored to have Judge Neiman participate in this
5 process.

6 I do think as a formal matter, we would need to
7 consider that and look into the issues that you've raised as
8 well, but we're very appreciative and appreciate Judge
9 Neiman's interest in this as well.

10 MAGISTRATE JUDGE BOAL: So, he's on recall status
11 now. So, in terms of your timing, I assume you'll report back
12 to us as to whether or not that is acceptable or appropriate.

13 MS. JOHNSON: We certainly will, your Honor, and I --
14 we would not wait until the next status conference to do that.
15 We would act very quickly on this.

16 THE COURT: That's fine. Thank you.

17 MS. JOHNSON: Thank you.

18 And that brings us to 4(c), the Premier defendants
19 assented-to motion to allow master answers. There is a -- we
20 addressed this at the last status conference, your Honor. I
21 actually have a copy of the proposed order. This is an
22 assented-to motion that we addressed last time. If I may hand
23 that up.

24 THE COURT: Yes.

25 (Attorney Johnson hands document to the Court.)

1 THE COURT: It's answers to the complaint, right?

2 MS. JOHNSON: Yes. So, your Honor, this is an order
3 that is formally permitting master answers to be filed in
4 response to the New Jersey complaints and also permitting
5 master affidavits of merit as well, and for the record it's
6 ECF No. 1553-1.

7 THE COURT: Now, this is something that I need to act
8 on?

9 MS. JOHNSON: Yes, your Honor. The parties have
10 already filed the master answers and the --

11 THE COURT: Is there any reason not to approve it?

12 MS. JOHNSON: As a procedural matter, you have not
13 entered the order permitting us to do that.

14 THE COURT: So, just approve it?

15 MS. JOHNSON: Yes, please.

16 THE COURT: I'll read it before I approve it.

17 MS. JOHNSON: Thank you, your Honor.

18 And then I believe that brings us to the status of
19 the bankruptcy and I turn to Mr. Gottfried for that.

20 MR. GOTTFRIED: Good afternoon, your Honor.

21 As you've already heard and I think it's really more
22 for emphasis, the Court has set the hearing on the disclosure
23 statement for February 24th. The trustee is planning on
24 filing a supplement on the 13th. And so, we really are at the
25 fork in the road. Those who are interested in concluding

1 their settlements need to do so now in order to be part of
2 that process.

3 It's simply the situation where the trustee doesn't
4 expect and believes there will be no further people
5 participating in the bankruptcy process who are not part of
6 the disclosure statement that ultimately gets approved and
7 served on the parties after Judge Boroff approves it.

8 So, if you are interested in pursuing a bankruptcy
9 solution, now is the time and the time is running short. I
10 think that's really the bankruptcy message.

11 MR. COREN: Your Honor, Mike Coren for the Creditor's
12 Committee.

13 I just can amplify on that February 6th date and what
14 it really means. Professor Green and Carmen Reiss and the
15 various -- the PSC and the various state groups, where there
16 are large pods of cases, for example, Premier, which is in
17 front of you, your Honor, because there was a great number of
18 cases and different complaints, the parties got together and
19 have a solution, but that is a classic type of case where,
20 oddly -- and just there's no real good explanation why
21 Professor -- why we're not in front of Professor Green between
22 now and February 6th.

23 Mr. Blumberg is here in the courtroom. Maybe he
24 could explain why there's no interest, but it's -- there's
25 about 30 to 35 cases pending. Some of them are very

1 significant. They have an overlap with the Inspira case,
2 which your Honor is familiar with because it's one of the
3 settling parties in the bankruptcy, and it's just one of those
4 logical -- you know, logical pods of cases that really scream
5 out for Professor Green to be working on the parties, but he
6 can't do anything unless we get the insurance carrier -- or
7 their interest there, and it just makes sense in there. Box
8 Hill, eight cases, four death cases, why isn't there
9 discussions for this bankruptcy solution? We're at a loss.

10 THE COURT: What can I do?

11 MR. COREN: Maybe get the parties here in front of
12 you and explore, you know, with Professor Green under your
13 auspices, like Insight, to make progress like progress was
14 made in Insight. Professor Green is very good at getting
15 parties together, but until, you know, there's some impetus to
16 get the parties' tuchuses to Boston or New York or wherever
17 Professor Green will see them, it's hard for him to do what he
18 does very well or what Carmen Reiss does very well or
19 Geronemus does very well.

20 COURT REPORTER: I'm sorry?

21 MR. COREN: Carmen Reiss or David Geronemus.

22 THE COURT: You need to spell that.

23 MS. JOHNSON: G-e-r-o-n-e-m-u-s.

24 MR. COREN: He's also one of the mediators.

25 THE COURT: Carmen Reiss I think is R-e-i-s or

1 R-i-e-s, I believe.

2 MS. JOHNSON: R-e-i-s-s, I believe.

3 THE COURT: Excuse me one moment.

4 Are there any counsel on the telephone who represent
5 the parties that were just mentioned who have not yet gone
6 before Professor Green?

7 MR. COREN: Mr. Blumberg is in the courtroom.

8 MR. KIRBY: I'm here. This is Greg Kirby. I
9 represent Box Hill.

10 THE COURT: Okay. Counsel in the courtroom is about
11 to address this issue and then you're next.

12 MR. BLUMBERG: This is Jay Blumberg and I represent
13 the Premier defendants from New Jersey.

14 With all due respect, we understand the ramifications
15 of going forward in litigation. We understand that there are
16 opportunities for us to participate in mediation. We have
17 discussed that at length, and at this point in time we are
18 just simply not interested in pursuing mediation. We don't
19 believe we did anything wrong, and for that reason, we are not
20 participating in the mediation.

21 If the Court orders us to be in front of you and I
22 have to bring my clients or my insurance carriers in front of
23 you, we'll do that, but we've been doing this a long time. We
24 know what the issues are. We know the ramifications of
25 participating in litigation, and they have chosen at this

1 point not to participate.

2 THE COURT: Well, that's their choice, I suppose.

3 It seems to me that the view is not -- the correct
4 view is not as much as we have done nothing wrong as is the
5 risk of being found to have done something wrong. I mean,
6 that's the real question. And you may be as innocent as you
7 say you are, but a jury can say otherwise and it's the risk
8 that the mediation ultimately is designed to eliminate, but
9 it's your choice, your judgment, and I don't think I can force
10 you to abandon your judgment.

11 MR. BLUMBERG: That's true --

12 THE COURT: Which I'm not inclined to do that.

13 MR. BLUMBERG: That's true in every case that we
14 have, your Honor, and I agree with you. I think --

15 THE COURT: I know, but it's never -- you know, the
16 interesting thing is that counsel don't talk about it in terms
17 of risk. They talk about, We've done nothing wrong --

18 MR. BLUMBERG: Well --

19 THE COURT: -- and maybe that imports the degree of
20 the acknowledgment of risk.

21 MR. BLUMBERG: I've been retained by an insurance
22 company. What they do for a living is evaluate risk and
23 they're the ones that are making most of the decisions as to
24 whether we go forward or not.

25 THE COURT: Okay. It was a good effort, but --

1 MR. COREN: It was, your Honor, and I thank you.

2 THE COURT: Now, there was somebody on the phone who
3 also wanted to say something about this and I've forgotten
4 your name, I'm sorry.

5 MR. COREN: Mr. Kirby.

6 MR. KIRBY: This is Greg Kirby, representing Box Hill.

7 I don't necessarily want to say anything. We respect
8 your comment. We've also been at this for a long time and I
9 couldn't say anything better than Mr. Blumberg. So, I'll just
10 adopt what he said.

11 THE COURT: Who are your clients?

12 MR. KIRBY: Box Hill Surgery Center and Dr.
13 Bhambhani.

14 THE COURT: Okay. Well, there we are.

15 MR. COREN: Onward we go, your Honor.

16 THE COURT: Right.

17 MS. JOHNSON: Your Honor, I would like to acknowledge
18 the Court's assistance in holding an all-day mediation to
19 attempt to resolve the matter earlier this month. Despite the
20 fact that that -- I cannot report that that mediation has
21 resolved, but we did find it to be extremely helpful and very
22 much appreciated the Courts' involvement as well as the
23 mediator's involvement in that.

24 THE COURT: Judge Boal, too.

25 MS. JOHNSON: Yes. Sorry, that was a plural

1 "Courts'."

2 THE COURT: Thank you.

3 You want to meet again on February 17th? Is this the
4 time we have set already, Lisa?

5 COURTROOM DEPUTY CLERK URSO: Yes.

6 THE COURT: So, we're on for February 17th.

7 COURTROOM DEPUTY CLERK URSO: At 2:00, with motions.

8 THE COURT: Judge Boal at 11:30 and Judge Boal and
9 Judge Zobel at 2:00. Okay.

10 And will there be a motion hearing at that time?

11 COURTROOM DEPUTY CLERK URSO: Yes. In my little
12 notes, we have motions first. I wrote a little note.

13 THE COURT: To start?

14 COURTROOM DEPUTY CLERK URSO: Motions to start first.

15 MS. JOHNSON: It is unclear to me at this point, your
16 Honor, whether we will be requesting oral argument on any
17 motions at that time in light of your suggestion that we
18 revisit some of the motions to dismiss timing, but we will try
19 to let you know as soon as we can on that.

20 THE COURT: Thank you.

21 MS. JOHNSON: I think that brings us to (C) and
22 agenda item No. 8, fully-briefed motions. I don't think we
23 need to address everything on this list, your Honor, but there
24 are a couple I would draw to your attention.

25 No. 8, the Plaintiffs' Steering Committee had much

1 earlier in time moved for entry of a case management order
2 addressing some Virginia matters. By agreement of the parties
3 when they entered into mediation, they agreed not to press
4 that order, but it does continue to appear on this list.

5 If the mediation with Insight does not resolve
6 successfully, the PSC expects to inform the Court and ask that
7 the Court turn to and address that order.

8 THE COURT: All right.

9 (Discussion off the record.)

10 MS. DOUGHERTY: Your Honor, Kim Dougherty on behalf
11 of the Luna matter, No. 10.

12 You may recall, we had argument with respect to the
13 motion to dismiss at the last hearing and there were issues
14 related to the probate and the estate.

15 We did notify the Court and defense counsel through
16 our sur-reply and also through communications with defense
17 counsel that Ms. Luna has been officially appointed personal
18 representative of the estate. We have a meet-and-confer
19 scheduled for next week to see if, in fact, any other issues
20 remain that need to be resolved between the parties and,
21 hopefully, we can file something jointly shortly thereafter.

22 THE COURT: At that point these motions are ripe for
23 decision or are you going to try to settle with -- is she
24 trying to settle with the defendant?

25 MS. DOUGHERTY: You asked us to communicate and

1 resolve any issues that we can among ourselves and report back
2 to you. So, we're going to attempt to do that, your Honor.

3 With respect to No. 11, those both parties have
4 agreed can be decided on the papers. Just brief background on
5 that. They are just consolidating two dockets that relate to
6 the same exact plaintiff.

7 We had originally filed in accordance with the orders
8 of the Court for Bellwether selection cases directly into the
9 MDL. We followed up to file also in the federal court in the
10 home state in Tennessee and also in Ohio and just to protect
11 our personal jurisdiction issues. Those were then transferred
12 to this Court.

13 We have asked that the Court now consolidate the
14 cases, one that was filed for the Bellwether purposes and
15 then, two, the one that was transferred into the MDL from the
16 out-of-state court, just so that we have one docket for those
17 matters, and those are all listed in No. 11, your Honor, and
18 defense counsel said they would rest on the papers as well.

19 THE COURT: Okay. Are the defendants proposing --
20 Ameridose, I guess, is the primary defendant -- filing any
21 opposition or has it been filed? I mean, are they ready for
22 decision now, these motions?

23 MS. DOUGHERTY: Yes, your Honor. Ameridose has not
24 filed an opposition. The only ones that have oppositions are
25 the Tennessee cases, Carter, Patel and Seiber, and those have

1 been filed and are noted in 11(a).

2 MR. TARDIO: Your Honor, Chris Tardio on behalf of
3 the BKC clinics defendants.

4 We filed -- I guess, technically, it's an opposition.
5 We don't have any opposition to cleaning up the docket and
6 getting these under one docket number.

7 The issue is by consolidating them, the later-filed
8 cases just go away. There needs to be a dismissal order of
9 the later-filed duplicative case to achieve what I think the
10 plaintiffs are trying to achieve.

11 THE COURT: And you're prepared to do that?

12 MS. DOUGHERTY: Your Honor, we just want to ensure
13 that it incorporates and adopts by reference our long-form
14 complaint which was also filed in the other state. If we can
15 get agreement from counsel that by doing that, we're not
16 waiving any issues, and with respect to jurisdiction, perhaps
17 we can work it out and also with respect to the statute of
18 limitations.

19 THE COURT: So, I won't decide this today.

20 MS. DOUGHERTY: Yes. Thank you.

21 THE COURT: Thank you.

22 MS. JOHNSON: I think we can turn, then, to the
23 briefing in progress. I think there are only two to flag for
24 the Court there. No. 12, that's a motion by Insight. Again,
25 the parties have agreed not to press that issue while the

1 mediation is ongoing.

2 And then if we turn to No. 15, there's a motion by
3 ARL that ARL counsel or Mr. Ellis may want to address briefly.

4 MR. WALTON: Good afternoon, your Honor. Ken Walton
5 for ARL.

6 Your Honor, we have settled with the PSC and the
7 trustee, and what we filed is a motion to stay this proceeding
8 as to us, my client, ARL.

9 Just a couple of things, your Honor. The motion
10 filed on December 31st offered the deadline for filing
11 oppositions is today. So, conceivably, you know, that could
12 happen after this hearing. Mr. Ellis from the PSC advised me
13 that as of 1 o'clock today, no oppositions had been filed.

14 The reason I just want to touch on the motion briefly
15 is just to emphasize the motion in form is entirely consistent
16 with prior motions filed with the Court and the order that
17 we've attached is consistent with prior orders issued by this
18 Court, including the one on October 9th, 2014.

19 I don't know if any oppositions will be filed today.
20 I can't speak to that, but even if there are, your Honor, we
21 would ask, respectfully, that you issue a prompt ruling on the
22 motion because -- for this reason:

23 This stay is a material term of our settlement
24 agreement. We do want to be part of the bankruptcy wrap-up on
25 February 24th. So, not having an order issuing this stay --

1 which is very important because, you know, just being part of
2 this proceeding with all these lawyers, it does require kind
3 of a daily monitoring that costs my client money, frankly.

4 So, that's --

5 THE COURT: But you meet so many nice people in the
6 process.

7 MR. WALTON: I do. It's been a great experience,
8 your Honor, but we would like to wrap it up.

9 THE COURT: So, what do I need in order to decide
10 this?

11 MR. WALTON: Well, your Honor, I think we have
12 attached to the motion the actual order and it's --

13 THE COURT: I seem to have all the other papers
14 pertaining to this except that one, 1620.

15 MR. WALTON: I can rip it off and hand it up.

16 THE COURT: No. I can find it. Just tell me what I
17 need to do.

18 MR. WALTON: Actually, your Honor, just enter the
19 order, if acceptable to the Court, obviously.

20 THE COURT: This is an exhibit to Docket No. 1620 or
21 21?

22 MR. ELLIS: Exhibit 2, your Honor.

23 THE COURT: Exhibit 2 to 1620?

24 MR. ELLIS: Yes.

25 MR. WALTON: Yes, your Honor, Exhibit 2 to 1620.

1 MR. ELLIS: And, your Honor, the PSC has filed a
2 joinder to this motion and --

3 THE COURT: I have that.

4 MR. ELLIS: And the trustee and the Creditor's
5 Committee also filed a joinder to the motion. So, we would
6 ask that it also be allowed.

7 THE COURT: Is there anybody who is objecting to it?

8 MR. ELLIS: The objections are not due until the end
9 of today, but as of -- before I left for court, there had been
10 no oppositions.

11 THE COURT: All right.

12 MR. WALTON: And, your Honor, if I may. Again, I
13 probably shouldn't argue something when there is no
14 opposition.

15 The last time this motion came up, the only
16 objection -- my understanding, the only objection was that the
17 party objecting didn't want to be prohibited from discovery
18 relating to their cases, and to address that issue, we put a
19 carve-out in this order saying if you can show the Court that
20 you have necessary discovery as it relates to my client, that
21 that would be permissible. So, we have addressed the one
22 objection that was raised previously.

23 THE COURT: Thank you.

24 MR. WALTON: Thank you, your Honor.

25 MR. GOTTFRIED: And, your Honor, the trustee joins in

1 this motion.

2 MS. TAYLOR: As does the Creditor's Committee, your
3 Honor.

4 MR. WALTON: Thank you, your Honor.

5 THE COURT: That's it.

6 MS. JOHNSON: Except for scheduling, your Honor, if
7 we could schedule the March and April conferences. I have
8 many parents pointing out that spring break falls within those
9 timeframes. Perhaps we could get some time --

10 THE COURT: They could bring their children.

11 (Laughter.)

12 MS. JOHNSON: What an education it would be.

13 COURTROOM DEPUTY CLERK URSO: So, schedule for March?
14 I'm sorry, did you say a date?

15 MS. JOHNSON: Perhaps the 11th or 12th of March.

16 COURTROOM DEPUTY CLERK URSO: Okay. I could move
17 something. I mean, if that's agreeable, the 12th I could do.
18 I could move something.

19 MS. JOHNSON: I understand that does not work for
20 some counsel. Perhaps any day the following week?

21 COURTROOM DEPUTY CLERK URSO: Well, I was just
22 looking -- that's spring break. Okay.

23 So, the following week or the 23rd, the week of the
24 23rd?

25 (Discussion off the record.)

1 MS. JOHNSON: The week of the 23rd would be great.

2 COURTROOM DEPUTY CLERK URSO: Okay. Well, I have
3 stuff scheduled, but what day would work best for counsel?
4 Because I could move what I have on.

5 MS. JOHNSON: I think we try to do Wednesdays or
6 Thursdays to accommodate people coming in from out of town,
7 generally.

8 COURTROOM DEPUTY CLERK URSO: Well, if we could do
9 the Wednesday, that would be easier on the Court's schedule,
10 but, if not, obviously Thursday.

11 THE COURT: Can we move what we have on Thursday to
12 Wednesday?

13 COURTROOM DEPUTY CLERK URSO: Yes, but -- we could,
14 Judge.

15 (Discussion off the record at the Bench.)

16 THE COURT: We have a problem of a multi-defendant
17 case and we cannot sentence the guys who have pleaded at the
18 same time. We have to --

19 COURTROOM DEPUTY CLERK URSO: Some of them.

20 THE COURT: Some of them. So, that's why a whole
21 pile of days are being used up by sentencing for people who
22 can't meet in the courtroom.

23 MR. FERN: Wednesday is fine.

24 COURTROOM DEPUTY CLERK URSO: Okay. We could do
25 Wednesday, at 2:00.

1 MR. FERN: 3/25?

2 COURTROOM DEPUTY CLERK URSO: 3/25, at 2:00, yes.

3 THE COURT: Do we assume, again, that we will have a
4 brief motion hearing where any motions require a hearing
5 before we get to the rest of the agenda?

6 MS. JOHNSON: That seems to work well, your Honor, so
7 long as that works for the Court.

8 THE COURT: You will, in the meantime, also work on a
9 protocol for combining some of these state law cases into one
10 hearing rather than ten.

11 MS. JOHNSON: Yes, we will do that.

12 COURTROOM DEPUTY CLERK URSO: I'm sorry. Did you say
13 you wanted to do April also or were we just going to do March?

14 MS. JOHNSON: If we could do April, that would be
15 fine.

16 COURTROOM DEPUTY CLERK URSO: Okay. What are we
17 looking at there? Because April is vacation also, right, the
18 20th? The week of the 20th, that's vacation, correct?

19 MS. JOHNSON: Yes. So, I suppose the 15th.

20 COURTROOM DEPUTY CLERK URSO: Well, both of those --
21 we have nothing on either one of the 15th or the 16th. So,
22 whichever is better for counsel.

23 MR. FERN: Thursday is the 16th?

24 MR. GOTTFRIED: 15th.

25 THE COURT: I'm sorry, which date in April?

1 COURTROOM DEPUTY CLERK URSO: It was the 15th or 16th
2 they were looking for. Either day is available for us, but
3 some said the 16th they can't.

4 UNIDENTIFIED SPEAKER: The 15th is the Women's
5 Conference in Austin that -- from all over the country and
6 there are several of us --

7 THE COURT: So, another week.

8 COURTROOM DEPUTY CLERK URSO: And then school
9 vacation week is the April 20th week.

10 MS. JOHNSON: I think we could look at the week of
11 the 27th.

12 COURTROOM DEPUTY CLERK URSO: Okay. Well, the same
13 thing is available there. I mean --

14 THE COURT: That's when the men are meeting.

15 (Laughter.)

16 MS. JOHNSON: We don't need them.

17 COURTROOM DEPUTY CLERK URSO: What about April 29th,
18 at 2:00?

19 MS. JOHNSON: That would be great.

20 THE COURT: What's the day, Lisa?

21 COURTROOM DEPUTY CLERK URSO: 4/29, at 2:00.

22 THE COURT: And the next meeting is actually February
23 17th, I think. Yes, February 17th, at 2:00.

24 COURTROOM DEPUTY CLERK URSO: Yes, at 2:00. So, then
25 4/29, at 2:00, okay.

1 MS. JOHNSON: Judge Boal, if I may ask, should we
2 anticipate that there may be discovery conferences on those
3 same dates, understanding that may change depending on what's
4 before you?

5 MAGISTRATE JUDGE BOAL: Yes.

6 MS. JOHNSON: Thank you.

7 THE COURT: Does anybody have anything else?

8 (No response.)

9 THE COURT: Mr. Stranch, you're just scratching your
10 head, you're not waving your hand?

11 MR. STRANCH: No.

12 THE COURT: Okay. We are adjourned. And, again, I
13 thank you very much.

14 MS. JOHNSON: Thank you, your Honor.

15 MR. STRANCH: Thank you, your Honor.

16 THE COURT: And Court is in recess.

17 (Adjourned, 3:19 p.m.)
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C E R T I F I C A T E

I, Catherine A. Handel, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 66, constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the matter of No. 13-md-2419-RWZ, In Re: New England Compounding Pharmacy, Inc., Products Liability Litigation.

January 20, 2015
Date

/s/Catherine A. Handel
Catherine A. Handel, RPR-CM, CRR